IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 70 OF 2003

SMT. AUTA G DE SOUZA AND ORS. ....Appellants

Versus

SHRI VINAYAK LADDU NAIK AND ANR. ....Respondents

Mr. M. P. Almeida, advocate for the appellants.
Mr. V. Pangam, advocate for respondent nos.1 and 2.

Coram:- R. M. LODHA, J.

Date:- 24th August, 2005

P.C.

Heard the learned counsel for the appellants and perused the judgment of the District Judge, South Goa, dated 26th March, 2003 and also the judgment of the trial Judge. The appellants are the original plaintiffs. They claim that they are owners in possession of the suit property bearing survey no.80/6 at Velsao, Salcete. The case of the plaintiffs as set up in the plaint was that the defendants encroached upon the portion of the said property and put up stalls unauthorisedly.

On the other hand, the case of the defendants was that they were occupying the subject stalls on the basis of permission from Miss Maria Carmo D'Souza. According to the defendants the said Maria Carmo D'Souza was the owner of the property and by agreement dated l.8.1976 the subject stalls were given on licence to them. They averred that earlier one Lizette Souza filed suit no.25/85 against them but the said suit abated on the death of Lizette Souza.

The Appeal Court has recorded the finding that the plaintifs have failed to establish their ownership. The plaintiffs based their claim of ownership on the basis of partition deed (P.W.1/4). However, the partition deed does not reveal that all co-owners were parties to the said document. As a matter of fact from the evidence of the plaintiffs, it is revealed that Lizette

Souza and Maria Carmo de Souza were also co-owners but they were not parties to the partition deed. Thus the finding of the Appeal Court cannot be said to suffer from any illegality.

Pertinently, the defendants claim to be in possession of the subject stalls on the basis of permission granted by Maria Carmo de Souza. She is the co-owner. The earlier suit filed by another co-owner Lizette Souza against the defnednats was dismnissed as abated.

All in all the consideration of the matter by the Appeal Court does not suffer from any error of law. No substantial question of law arises. Second appeal is dismissed in limine

R. M. LODHA, J.